



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R07-OAR-2021-0171; FRL-10021-33-Region 7]**

#### **Air Plan Approval; Nebraska; Revisions to Title 115 of the Nebraska Administrative Code; Rules of Practice and Procedure.**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) submitted by the State of Nebraska on September 24, 2020. This proposed action will amend the SIP to revise title 115 of the Nebraska Administrative Code "Nebraska Rules of Practice and Procedure." Title 115 describes the procedures the Nebraska Department of Environment and Energy (NDEE), formerly the Nebraska Department of Environmental Quality (NDEQ), will follow for proceedings under the Administrative Procedure Act. These proceedings include contested cases, rulemaking petitions, and declaratory rulings among others. In addition, title 115 contains procedures related to submission and review of confidentiality claims for trade secrets, public hearing requirements for permits, and other fact-finding hearings not covered in other more program specific regulatory titles. These proposed changes consolidate five chapters into a single chapter by removing duplicative language and incorporating by reference model rules of agency procedure promulgated by the Attorney

General for agency use in accordance with the Administrative Procedure Act. The proposed revisions also update language; renumber chapters; and make minor wording changes. The proposed changes do not substantively change any existing statutory or regulatory requirement or impact the stringency of the SIP or air quality, do not revise emission limits or procedures, nor do they impact the State's ability to attain or maintain the National Ambient Air Quality Standards.

**DATES:** Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-R07-OAR-2021-0171 to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Written Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** William Stone, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551-7714; email address: [stone.william@epa.gov](mailto:stone.william@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," and "our" refer to the EPA.

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### **I. Written Comments**

Submit your comments, identified by Docket ID No. EPA-R07-OAR-2021-0171, at <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

### **II. What is Being Addressed in this Document?**

EPA is proposing to amend Nebraska's SIP to include revisions to title 115 of the Nebraska Administrative Code. The

EPA is proposing to approve revisions to the Nebraska SIP received on September 24, 2020. The revisions are to Title 115 - Nebraska Rules of Practice and Procedure. These revisions are described in detail in the technical support document (TSD) included in the docket for this action.

EPA is proposing approval of these revisions as they do not substantively change any existing statutory or regulatory requirement. These revisions do not impact the stringency of the SIP or air quality.

### **III. Have the Requirements for Approval of a SIP Revision Been Met?**

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The state provided public notice of the revisions from February 28, 2019, to April 2, 2019, and held a public hearing on April 3, 2019. The state received no comments. As explained in more detail in the TSD which is part of this docket, the SIP revision submission meets the substantive requirements of the Clean Air Act (CAA), including section 110 and implementing regulations.

### **IV. What Action is the EPA Taking?**

The EPA is proposing to amend the Nebraska SIP by approving the State's request to revise Title 115 - Nebraska Rules of Practice and Procedure. Approval of these revisions will ensure consistency between state and federally-approved rules. The EPA

has determined that these changes will not adversely impact air quality.

The EPA is processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

## **V. Incorporation by Reference**

In this action, the EPA is proposing to include regulatory text in a final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Nebraska Regulations described in the proposed amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## **VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 9, 2021.

Edward H. Chu,  
Acting Regional Administrator,  
Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

**PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart CC-Nebraska**

2. In §52.1420:

a. The table in paragraph (c) is amended by revising the entries "115-1", "115-2", and "115-3"; and

b. The table in paragraph (c) is amended by removing the entries "115-4", "115-5", "115-6", "115-7", "115-8", "115-9", and "115-10".

The revisions read as follows:

**§52.1420 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA-Approved Nebraska Regulations**

Nebraska citation	Title	State effective date	EPA Approval date	Explanation
<b>STATE OF NEBRASKA</b>				
<b>Department of Environmental Quality</b>				
* * * * *				
<b>Title 115—Rules of Practice and Procedure</b>				
115-1	Adoption of Model Rules	6/24/2019	[Date of publication of the final rule in the Federal Register], [Federal Register citation of the final rule]	
115-2	Confidentiality for Trade Secrets	6/24/2019	[Date of publication of the final rule in the Federal Register], [Federal Register citation of the final rule]	



Nebraska citation	Title	State effective date	EPA Approval date	Explanation
115-3	Public Hearings	6/24/2019	[Date of publication of the final rule in the Federal Register], [Federal Register citation of the final rule]	
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[FR Doc. 2021-05321 Filed: 3/18/2021 8:45 am; Publication Date: 3/19/2021]